

PATENT COOPERATION TREATY

01538517

From the 26 APR 2005
 INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

11 APR 2005

To:

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PCT

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT

(PCT Rule 71.1)

Date of mailing
(day/month/year)

07.04.2005

Applicant's or agent's file reference
MP020041-WO

IMPORTANT NOTIFICATION

International application No.
PCT/GB 03/05264International filing date (day/month/year)
01.12.2003Priority date (day/month/year)
10.12.2002

Applicant

ACE THREE (UK) LIMITED

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/AB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed invention is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international preliminary examining authority:

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PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference MP020041-WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA416)	
International application No. PCT/GB 03/05264	International filing date (day/month/year) 01.12.2003	Priority date (day/month/year) 10.12.2002
International Patent Classification (IPC) or both national classification and IPC A23B4/16		
Applicant ACE THREE (UK) LIMITED		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
 - This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.
3. This report contains indications relating to the following items:
 - I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application

Date of submission of the demand 05.07.2004	Date of completion of this report 07.04.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx. 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Popa, M Telephone No. +49 89 2399-7829

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/GB 03/05264

I. Basis of the report

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-23 as originally filed

Claims, Numbers

1-12 as originally filed

Drawings, Figures

1-18 as originally filed

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

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5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).
(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1,2,4,5,6,7,9,10,11,12
Inventive step (IS)	Yes: Claims	
	No: Claims	3,8
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

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Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following documents:

- D1: WO 94/10233 A (COMMW SCIENT IND RES ORG ;STEELE ROBERT JOHN (AU); JIANG XIANG ZHO) 11 May 1994 cited in the application
D2: EP-A-0 571 228 (CLEMES DENNIS CHARLES) 24 November 1993
D3: EP-A-0 351 636 (CLEMES DENNIS CHARLES) 24 January 1990 cited in the application
D4: US-A-3 559 562 (CARLSON HERBERT E ET AL) 2 February 1971.
D5: FR-A-2 467 795 (ILLOUZE CHARLES) 30 April 1981
D6: FR-A-2 611 669 (ILLOUZE CHARLES) 9 September 1988

1.a Certain published documents (Rule 70.10)

Application No Patent No	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO 03/028977 A1	10 April 2003	3 October 2002	3 October 2001

2. This application has been found to have deficiencies that contravene the PCT requirements.
- 2.1. The following syntagm are considered by the substantive examiner to be a merely descriptive feature, thus having a non-limiting effect upon the scope of the affected claim: *latent* (claim 1).
- 2.2. The independent claims 11 and 12 are unclear formulated, contrary to the requirements of Art. 6 PCT. In view of their examination, they have been interpreted as follows: *11. A packaging material comprising an article according to claim 9 or claim 10. 12. A foodstuff comprising an article according to claim 9 or claim 10.* This is not an amendment (not permissible in view of R. 66.8(a) PCT) but an interpretation used to clarify the subject-matter of said claims.

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- 2.3.** Claim 8 is formulated in a desideratum form (result to be achieved) since it is not clear for the person skilled in the art how a general-defined polymer "... *is capable of absorbing during swelling at least 2% ... water by weight of the polymer.*". It will be practically impossible for the skilled person to test all the polymers for their swelling capacities. Moreover, there are alternatives to this definition to pin-point the polymers to protect without involving rare used parameters, for instance using the molecular weight or the degree of polymerisation, both parameters being very common in the polymer field. Therefore, claim 8 is not allowed in this form under Art. 6 PCT.
- 2.4.** Words like *preferably* are considered to have a non-limiting effect upon the scope of the affected claim, namely 8. Therefore, the features introduced by such words are disregarded in the analysis of submitted claims.
- 3.** Present application does not meet the requirement of Art. 33(1) PCT because the subject-matter of claims 1 and 9-12 is not new in the sense of Art 33(2) PCT.
- 3.1.** Many documents cited under X category in the International Search Report anticipate the features of the independent claims. For instance, document D1 discloses a sulphur dioxide releasing film (p. 2 l. 33 - p. 3 l. 10) comprising a hygroscopic polymer (p. 4 l. 12), calcium sulphite or sodium sulphite (p. 3 l. 11-22) and acidulants (p. 4 l. 3). In pages 11-13 of D1 various applications of this film are envisaged, including all the features of claims 9-12.
- As a consequence, claims 1 and 9-12 do not meet the requirements of Art. 33(2) PCT for lack of novelty in their subject-matter.
- 3.4.** Dependent claims 2-7 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, as their features are obvious and/or anticipated by aforementioned documents.
- 4.** To meet the requirements of Rule 5.1(a)(ii) PCT, the documents D1-D6 should have been identified in the description and its relevant contents should have been

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indicated.

The applicant has not provided reasons why the claim should not be in the two-part form.